



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,297	07/01/2003	Jesse Allen Curran	9D-DW-19448	2555

7590 08/15/2006

John S. Beulick
Armstrong Teasdale LLP
Suite 2600
One Metropolitan Square
St. Louis, MN 63102

EXAMINER

PATEL, RITA RAMESH

ART UNIT	PAPER NUMBER
----------	--------------

1746

DATE MAILED: 08/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/611,297

Applicant(s)

CURRAN, JESSE ALLEN

Examiner

Rita R. Patel

Art Unit

1746

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

Prior claim objection to claim 18 has been overcome.

Response to Applicant's Amendment

This Office Action is responsive to the amendment filed on 5/31/06. Claims 1-3, 5-6, 8-9, and 17-18 have been amended. Applicant's arguments have been considered, but are not persuasive. Thus, claims 1-20 are finally rejected for the reasons of record.

Applicant claims that Sloane does not describe or suggest that the created pivoting slot is a continuous longitudinal slot; however, looped ends 1a read on applicant's claim for a continuous longitudinal slot because the looped ends 1a are both continuously longitudinal in that they are formed from the rod-like material in a continuous manner and the looped portion forms a slot therein. It is further argued that Sloane does not describe or suggest a basket including side walls each having at least one continuous longitudinal slot that is slidably engageable with a projecting slide portion of a front wall to transform the basket from a first size to a smaller second size, but this is the same as the previous argument. Thus, Sloane's continuous longitudinal slots are also engageably connected with a projecting slide portion of a front wall, the loops 1a pivot about a side wall, and transform the basket from a first size to a small second size. Moreover, the Office maintains its rejection of claims 1 and 8 over Sloane.

Art Unit: 1746

Applicant contests that the McConnell reference does not describe or suggest a collapsible dishwasher basket including lateral side walls having at least one continuous longitudinal slot that slidably engages a projecting slide portion of another lateral wall to transform the basket from a first size to a small second size; however, the teaching of McConnell was provided to obviate a lid feature to Sloane. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a non-collapsible basket) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Thus, the Office maintains its rejections over Sloane further in view of McConnell.

Similarly, applicant contests that the Insalaco reference does not describe or suggest a collapsible dishwasher basket including lateral side walls having at least one continuous longitudinal slot that slidably engages a projecting slide portion of another lateral wall to transform the basket from a first size to a small second size; however, the teaching of Insalaco was provided to obviate the material composition of polypropylene in a dishwasher basket. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually

where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a non-collapsible basket) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Thus, the Office maintains its rejections over Sloane and McConnell further in view of Insalaco.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it would be obvious to one of ordinary skill in the art at the time of the invention to use a pivotally attached lid in Sloane to aid in further containing items held therein, as shown by McConnell, with expectation of providing desired enclosure of said apparatus used for holding items to be washed therein and it would be obvious to one of ordinary skill in the art at the time of the invention to incorporate such teachings of Insalaco with Sloan and

Art Unit: 1746

McConnell, to achieve a rigid but flexible structure, that is durable, and provide convenient and secure assembly of the basket within the rack of the dishwasher.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Claim Rejections - 35 USC § 112

Claim 1 rejection under 35 U.S.C. 112, second paragraph, has been overcome.
Claims 1-8 rejected under 35 U.S.C. 112, second paragraph, have also been overcome.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sloane (US Patent No. 2,529,267).

Sloane discloses a collapsible container C which can easily be set up and collapsed, comprising identical side walls, each consisting of horizontal/longitudinal rods 1 and vertical rods 2 (col. 1, lines 9-12; col. 2, lines 1-3). The walls form a rectangular shaped structure, as seen in Figure 1 of Sloane, wherein the structure of the container is made-up of horizontal and longitudinal rods which form mesh-like walls pervious to liquid flow therein. Sloane's teaching reads on applicant's invention wherein the basket is positionable between a first size and second size, the first size securing small items therein while the second size is smaller than the first and does not secure small items therein; Sloane's disclosure of the expanded container reads on the first size; Sloane's disclosure of the collapsed container reads on the second size. Additionally, Sloane discloses a lateral leg 6 located above the top horizontal and lateral leg of the respective edge-frame 3, thus providing a hand-hold HH (col. 2, lines 30-33), which may read on applicant's claim of a projection positioned on said basket for engageable transformation of said basket from said first size to said second size. In Figure 1, it can be seen that leg 6 is located on both side walls of the container; which reads on applicant's claim wherein the projection is mounted to at least one of said lateral walls.

Although Sloane's invention has not been disclosed for intended use in a dishwasher, Sloane's collapsible container is intended for use in holding items therein; arguably it may be used to hold items to be washed within a dishwasher. Sloane's invention is structurally capable of performing applicant's claimed use of for retaining items to be washed therein. It is well settled that the intended use of a claimed apparatus is not germane to the issue of the patentability of the claimed structure. If the

Art Unit: 1746

prior art structure is capable of performing the claimed use then it meets the claim. *In re Casey*, 152 USPQ 235, 238 (CCPA 1967); *In re Otto*, 136 USPA 459 (CPA 1963).

Claims 2-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sloane further in view of McConnell (US Patent No. 4,732,291).

Sloane illustrates in Figure 1 said container C has a bottom wall, whereby the lateral walls are pivotally attached thereon by pivot loops 1a which are turnably engaged by the vertical legs of the edge-frame 3 (col. 2, lines 35-37). However, Sloane fails to teach a lid for said container C. McConnell teaches a pivotally attached lid within an assembly for storing baby bottle parts for cleansing in a dishwasher wherein the assembly has an upper lid 13 which may be hinged to the periphery 31 by means of hinges 33 and 35. It would be obvious to one of ordinary skill in the art at the time of the invention to use a pivotally attached lid in Sloane to aid in further containing items held therein, as shown by McConnell, with expectation of providing desired enclosure of said apparatus used for holding items to be washed therein.

In Figure 1, Sloane illustrates the container C which reads on applicant's claims whereby the first size is configured such that said bottom wall is oriented substantially horizontally and each said lateral wall is oriented vertically. In Figure 2 Sloane illustrates the container C being collapsed which reads on applicant's claims whereby said bottom wall, said lateral walls and said lid is oriented substantially vertically; upon collapsing said container C, the top, bottom and lateral walls of the apparatus are in a vertical plane.

Claims 6, 7 and 9-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sloane and McConnell as applied to claims above, and further in view of Insalaco (US Patent No. 4,834,125).

Sloane and McConnell teach apparatuses used for holding objects to be washed therein, however, Sloane and McConnell fail to teach the material composition of said apparatus to be polypropylene and they also fail to teach the holding apparatus to have a connector to attach it to the rack of a dishwasher. However, Insalaco teaches a front loading dishwasher having a cabinet with an opening in its front side and a washing chamber interiorly disposed within the cabinet which includes a removable utensil basket 10 for a dishwasher which includes a pair of downwardly directed, spaced apart, integrally molded hooks 28 to securely, but removably, mount the basket 10 to a front portion 30 of the upper dish rack 12, wherein the utensil basket is preferably formed from polypropylene (Abstract; col. 3, lines 52-57). It would be obvious to one of ordinary skill in the art at the time of the invention to incorporate such teachings of Insalaco with Sloan and McConnell, to achieve a rigid but flexible structure, that is durable, and provide convenient and secure assembly of the basket within the rack of the dishwasher.

Applicant claims a knob positioned on at least one of said longitudinal walls, however the aforementioned hand hold handle 6 taught by Sloan reads on applicant's claim for a knob. Although Sloan does not call said handle a knob, it is capable of performing the same function as a knob by providing the user with a grip to hold for expanding and collapsing said apparatus, therefore the handle of Sloan reads on the

knob claimed by the applicant. It is well settled that the intended use of a claimed apparatus is not germane to the issue of the patentability of the claimed structure. If the prior art structure is capable of performing the claimed use then it meets the claim. *In re Casey*, 152 USPQ 235, 238 (CCPA 1967); *In re Otto*, 136 USPA 459 (CPA 1963).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rita R. Patel whose telephone number is (571) 272-8701. The examiner can normally be reached on M-F: 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached on (571) 272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RRP

A handwritten signature in black ink, appearing to read 'Alex Markoff', written in a cursive style.

ALEXANDER MARKOFF
PRIMARY EXAMINER